

FTC news

Federal Trade Commission Washington, D.C. 20580

FOR RELEASE: AUGUST 14, 1992

BEAZER PLC AGREES TO PAY \$760,000 CIVIL PENALTY TO SETTLE CHARGES THAT IT FAILED TO NOTIFY FTC BEFORE ACQUIRING KOPPERS COMPANY STOCK

Beazer PLC, a British general construction company, has agreed to pay a \$760,000 civil penalty to settle federal charges that it failed to notify federal antitrust agencies before acquiring more than \$15 million worth of stock in Koppers Company, Inc., the Federal Trade Commission announced today. According to the government's complaint detailing the charges, Beazer formed a partnership as a device to avoid complying with federal premerger notification requirements until it had acquired far more than the \$15 million worth of Koppers stock that triggers those requirements. Koppers, based in Pittsburgh, Pennsylvania, sells construction materials and services, including construction aggregates.

The failure to comply with premerger notification requirements allegedly violated the Hart-Scott-Rodino Act (HSR), which requires certain companies, before acquiring more than \$15 million worth of other companies, to file documents describing the proposed transaction with both the FTC and the Department of Justice. The companies then must observe a specified waiting period while one of those two agencies reviews the transaction for possible antitrust law violations. Under the HSR Act, any entity that fails to make a timely premerger filing and observe the prescribed waiting period before consummating the transaction is liable for a penalty of up to \$10,000 a day.

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(Beazer PLC--08/11/92)

According to the complaint, filed by the FTC attorneys acting as Special Attorneys to the U.S. Attorney General, Beazer began acquiring Koppers' stock in September 1987. By Oct. 19 of that year, the value of Beazer's acquisitions exceeded the \$15 million HSR Act threshold, yet Beazer did not notify the government at that time, according to the complaint. Beazer then continued making acquisitions until March 1988, by which time it owned \$63 million worth of Koppers' stock, before filing the HSR documents, the government charged. Thus, according to the complaint, Beazer was in violation of the HSR Act for 152 days.

Beazer allegedly made the acquisition pursuant to a plan to acquire all of Koppers' voting securities in a series of acquisitions through several entities, while delaying filing under the HSR Act. In September 1987, the complaint states, Beazer began purchasing Koppers securities through a wholly-owned U.S. subsidiary called Bright Aggregates, Inc., formed specifically for that purpose. In an alleged attempt to avoid the required HSR filing requirements, Beazer stopped purchasing Koppers' stock through Bright when the value of the acquired stock equalled approximately \$14 million, the complaint states. In October 1987, Bright, together with SL-Merger Inc. and Speedward Limited (subsidiaries of Shearson Lehman Brothers Holding, Inc. and National Westminster Bank PLC, respectively), allegedly began purchasing stock through a newly-formed general partnership called BNS Partners. The partnership was structured so that no one partner held more than a 49 per cent interest, but the partnership agreement gave Beazer the right to purchase the interests of Shearson and National Westminster at some later date. Beazer then formed BNS Inc., structured among partners Bright, SL-Merger and Speedward in the same proportions as BNS Partners, to file a cash tender offer for all of the remaining outstanding Koppers' voting securities. BNS Inc. made the cash tender offer on March 3, 1988. It was then that Beazer filed the required premerger notification with the Department of Justice and the FTC. Beazer became the sole owner of Koppers on Jan. 20, 1989, when it purchased the Koppers interests owned by the SL-Merger and Speedward.

(In a separate action, on March 18, 1988, the Department of Justice filed a complaint alleging that the acquisition of Koppers by BNS Inc. would violate the antitrust laws by substantially lessening competition in the southern California aggregates market. A consent judgment to settle the charges required BNS Inc. to divest any interest it acquired in Koppers' southern California aggregates plant.)

(Beazer PLC--08/14/92)

Under the terms of the stipulation and proposed final judgment settling today's charges, Beazer would pay a civil penalty of \$760,000 within 30 days of the date the judge approves the settlement. Payment would be made to the U.S. Treasury.

FTC attorneys filed the complaint and final judgment in the U.S. District Court for the District of Columbia on August 14.

The Commission vote to accept the settlement of civil penalties was 4-1, with Commissioner Mary L. Azcuenaga dissenting. Commissioner Azcuenaga found no basis for imposing civil penalties, not having found reason to believe a violation had occurred under Section 7A of the Clayton Act, 15 U.S.C. § 18a, and Section 801.90 of the rules promulgated thereunder, 16 C.F.R. § 801.90.

NOTE: This consent judgment is for settlement purposes only and does not constitute an admission by the defendant of a law violation. Consent judgments have the force of law when signed by the judge.

Copies of the complaint, stipulation and final judgment are available from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; 202-326-2222; TTY 202-326-2502.

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(Beazer)